HDC MidAtlantic

February 16, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R-1723 and RIN 7100-AF94 (Advanced Notice of Proposed Rulemaking Community Reinvestment Act)

To Whom It May Concern:

Thank you for the opportunity to comment on the advance notice of proposed rulemaking (ANPR) regarding modernizing the Federal Reserve Board's Community Reinvestment Act (CRA) regulatory and supervisory framework. I am writing on behalf of HDC MidAtlantic (HDC)—a developer and provider of, and advocate for, affordable housing with home offices in Lancaster (PA).

HDC MidAtlantic envisions a world where a safe, welcoming, affordable place to call home is open to everyone. We believe home should not be an impossible dream; it should be an attainable reality. We are resident advocates, trusted developers, property managers, community partners, and collaborators. We are part of the fabric of our towns and cities, and have been working with our neighbors since 1971 to create real change and meaningful connections. As champions of the greater good, we are committed to advancing equity, we open the door to opportunities, and we build homes that we can all be proud of.

HDC owns and/or manages over 2,900 apartments, providing housing that is safe and affordable to those with lower incomes, focusing on seniors, families, and individuals living with disabilities. Serving nearly 4,000 residents in 55 communities located in urban, suburban, and rural areas across Pennsylvania, Delaware and Maryland, HDC builds hope and opportunity for all residents to reach their full potential by creating, preserving, and strengthening affordable housing communities.

HDC's model of mission-driven, financially sustainable affordable housing development hinges on CRA investments through our banking partners. Without a robust CRA framework, our work would become unsustainable.

The Community Reinvestment Act (CRA) was enacted in 1977 to prevent redlining and to encourage banks to help meet the credit needs of all segments of their communities, including low- and moderate-income neighborhoods and individuals. The CRA extended and clarified the long-standing expectation that banks will serve the convenience and needs of their local communities. Over the years, CRA has given banks the incentive to engage with community developers such as HDC to improve neighborhoods and has been an enormously successful public policy.

HDC agrees with the objective outlined in the ANPR "to more effectively meet the needs of low- and moderate-income (LMI) communities and address inequities in credit access." Over the past 40 years, CRA has helped bring affordable housing, small businesses, jobs, and banking services to underserved communities. The need for such investment has been underscored over the last year as the pandemic and related economic downturn have highlighted continuing societal inequities. An effectively modernized CRA would build on CRA's successful record and contribute to an equitable economic recovery.

HDC MidAtlantic urges the Federal Reserve Board (the Board) to do the following:

> 1) Work with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) to adopt a consistent CRA regulatory framework;
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> 2) Recognize the original intent of the CRA and ongoing racial inequality by including race as an explicit factor for CRA evaluations; and
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> 3) Ensure that CRA modernization encourages continued investment in effective community development activities. Each of these is discussed in more detail below, and the relevant ANPR question being responded to is included when applicable.

I. Importance of a Consistent CRA Framework

HDC agrees with the Board's stated goal of "increasing clarity, consistence and transparency of supervisory expectation and of standards" which we do not think can be achieved without a consistent CRA regulatory framework agreed to by the Board, the OCC and the FDIC. Consistency across bank charter type, size and business model is key to achieving uniform application of the CRA obligation. In the Board's "Fact Sheet on the Community Reinvestment Act Advanced Notice of Proposed Rulemaking," the Board stated its desire to have this ANPR "provide a foundation for the agencies to converge on a consistent approach that has broad support among stakeholders." HDC shares that goal and welcomes continued opportunities to engage with the Board and the other agencies

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during the CRA modernization process.

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

HDC agrees with the Board that the main objective of CRA is to "more effectively meet the needs of LMI communities and address inequities in credit access" and must remain the focus of reform efforts. We would like to see consistency across banking regulators. And we recommend increasing lending, investing and services in communities of color and Low- and Moderate-Income (LMI) communities be added as an explicit objective of the reform.

II. Recognizing Racial Equity as a Core Purpose of CRA

As the ANPR states "Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities. Many believed that systemic inequities in credit access—due in large part to a practice known as 'redlining'—along with a lack of public and private investment was at the root of these communities' economic distress." HDC appreciates the Board including this critical context in the ANPR and recognizing that addressing systemic racial inequities in the banking system was the core purpose of the CRA legislation. The systemic inequities Congress designed the CRA to address are just as urgent as they were in 1977. HDC urges the Board to consider race in all aspects of CRA modernization, in particular looking to address the continued racial wealth gap and the lack of investment in LMI communities including communities of color.

Question 2: In considering how the CRA's history and purpose related to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

The Board should not overlook the CRA's history as civil rights legislation meant to address the impacts of racial discrimination in banking. The CRA is rooted in addressing systemic inequity, and it is important that the Board's proposal focus on increasing lending and investment in communities of color.

As Opportunity Finance Network (OFN) notes in its comment letter, a focus on race is well within the statutory confines of CRA. There are explicit references to race in the legislation including allowing investments with Minority Depository Institutions (MDIs), women-owned financial institutions, or low-income credit unions in minority communities to count for CRA credit. The law also requires reporting to Congress comparing depository institutions' lending in "minority neighborhoods" as well as other distressed areas. However, CRA too often has used income as a proxy for race, which is insufficient to target deeply entrenched systems of racial inequity.

Undoing decades of lending discrimination and racist practices in the financial services industry is difficult work and will not happen unless there is more information and more accountability on access to capital and services for communities of color. Regulators must track and assess how banks are meeting the financial needs of communities of colors as a central purpose of CRA and not simply as extra credit. To that end, HDC encourages the Board to review the proposal by the National Community Reinvestment Coalition (NCRC) that a bank should not be able to reach a presumption of satisfactory without demonstrated accountability of lending to people and communities of color in its assessment areas.

We also support two additional suggestions put forward by Low Income Investment Fund (LIIF) to account for racial equity in the community development test:

- Provide CRA credit for banks that invest in community development financial institution (CDFI) products designed to address racial inequity.
- Enforce anti-discriminatory activity across all elements of CRA, including avoiding arbitrarily excluding communities of color when banks designate assessment areas. This may also include incentives to invest in areas that meet certain criteria, like majority-minority census tracts, to explicitly support communities of color.

III. Continued Investment in Effective Community Development

The CRA has been an effective tool to encourage investment in organizations and activities that can transform communities but those investments would not have happened absent the affirmative obligation found in the statute. HDC appreciates that the Board recognizes the importance of these activities by creating a separate community development test. It is critical that rewriting CRA rules does not have the unintended consequence of discouraging community development investment or innovation.

Question 13. Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

HDC opposes the ANPR's proposal to increase the threshold for small banks from those under $326 million in assets to either $750 million or $1 billion since the community development test would apply only to large retail banks and wholesale and limited purpose banks. The increase in small bank threshold would exempt many more banks from the community development test, which could depress community development investment particularly in rural areas, which are typically served by smaller banks.

The Board's reason for making this change is lack of capacity for community development in rural areas – yet the proposed solution is to reduce community development requirements in these communities. The Board should be using the ANPR to strengthen, not exempt, banks' meaningful investments in underserved communities, particularly communities of color and communities fighting persistent poverty.

HDC has developed affordable housing communities in rural, suburban, and urban areas, with CRA investments being vital to success in every market type.

Question 42: Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

HDC supports combining community development loans and investments under one community development test. However, it is important that the new community development test does not encourage banks to favor community development debt products over community development equity products. HDC would like the Board to ensure there is still incentive for a bank to participate in proven community development equity investments such as: the Low Income Housing Tax Credit, New Markets Tax Credit, equity-equivalent investments in CDFIs and grants to community-based organizations. Banks should continue to separately track and report on investments, and the regulators should publish this data.

Question 47: Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

HDC supports impact scores as part of the qualitative evaluation of a bank's community development activities. In particular, we support providing an impact score for each community development loan and investment individually, as some activities have more benefits for communities than others. Impact scores should be used to account for responsiveness, innovation, and complexity. The ANPR recommends a scale of one to three to measure impact but does not provide sufficient detail about which activities would qualify for a one, two, or three as an impact score. The Board should provide more detail and examples of the types of projects that would be considered at each level of impact.

One way to encourage equity investments is to use the impact measurements proposed in the ANPR to ensure that banks continue to invest and lend to community development activities at least equal to current levels. We support the Board setting a minimum threshold of a bank's total community development activities that must be in equity investments. It is imperative that the evaluation framework for the new community development test be meaningful enough to continue to encourage impactful investments and innovation.

Question 52: Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

The country is facing an affordable housing crisis, that touches all communities and CRA should support investment in the production and preservation of affordable housing regardless of subsidy. CRA is a critical tool to incentivize bank participation in subsidized affordable housing and that should absolutely consider. However, CRA consideration should also extend to unsubsidized or naturally occurring affordable housing (NOAH). According to a 2017 Department of Housing and Urban Development report, over 80 percent of the nation's 32.8 million rental units affordable to LMI renters are not publicly subsidized and have no restriction on tenant incomes. Affordable rental housing without government assistance and income restrictions should be given favorable CRA treatment based on rent levels after renovation, rather than verification of tenant incomes. Preserving NOAH can be a way to protect residents of rapidly changing neighborhoods from displacement and therefore should not be limited based on the income of the neighborhood.

Question 54: Should the Board specify certain activities that could be viewed as particularly response to affordable housing needs? If so which activities?

Because of the core importance of housing to the purpose of the CRA and racial inequality, the Board should require banks to maintain a certain minimum level of new lending and investment in affordable housing. Examples of activities that could qualify include LIHTC equity investments, investment in social purpose REITS, housing-focused CDFIs, and investment in NeighborWorks of America organizations. To promote investment in affordable housing and set benchmarks, we recommend that the Board collect data on whether banks have increased, maintained, or decreased originations of affordable housing loans and other preferred affordable housing activities significantly at the bank level relative to the prior assessment period.

Question 67: Should banks receive CRA consideration for loans, investments or services in *conjunction with a CDFI operating anywhere in the country?*

HDC strongly supports the Board's proposal to allow automatic CRA credit for qualified activities in conjunction with certified CDFIs located anywhere in the country, even outside of the bank's assessment area. And we support the suggestion proposed by Housing Partnership Network, of which HDC is a member, that activities with nonprofit organizations that hold a NeighborWorks charter receive the same treatment. HDC is a chartered member of NeighborWorks of America. These mission-driven organizations undergo rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which we work.

IV. Conclusion

As the nation continues to confront the economic uncertainty brought on by the pandemic the role of CRA investments in vulnerable communities is now more important than ever. Thank you for your consideration of our comments.

Sincerely,

Chad Martin,
Vice President of Community Engagement